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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 340.

DOEHLER METAL FURNITURE CO., INC.,
Petitioner,

v.

LINDSAY C. WARREN, Comptroller General of the United States,
Respondent.

REPLY BRIEF OF PETITIONER.

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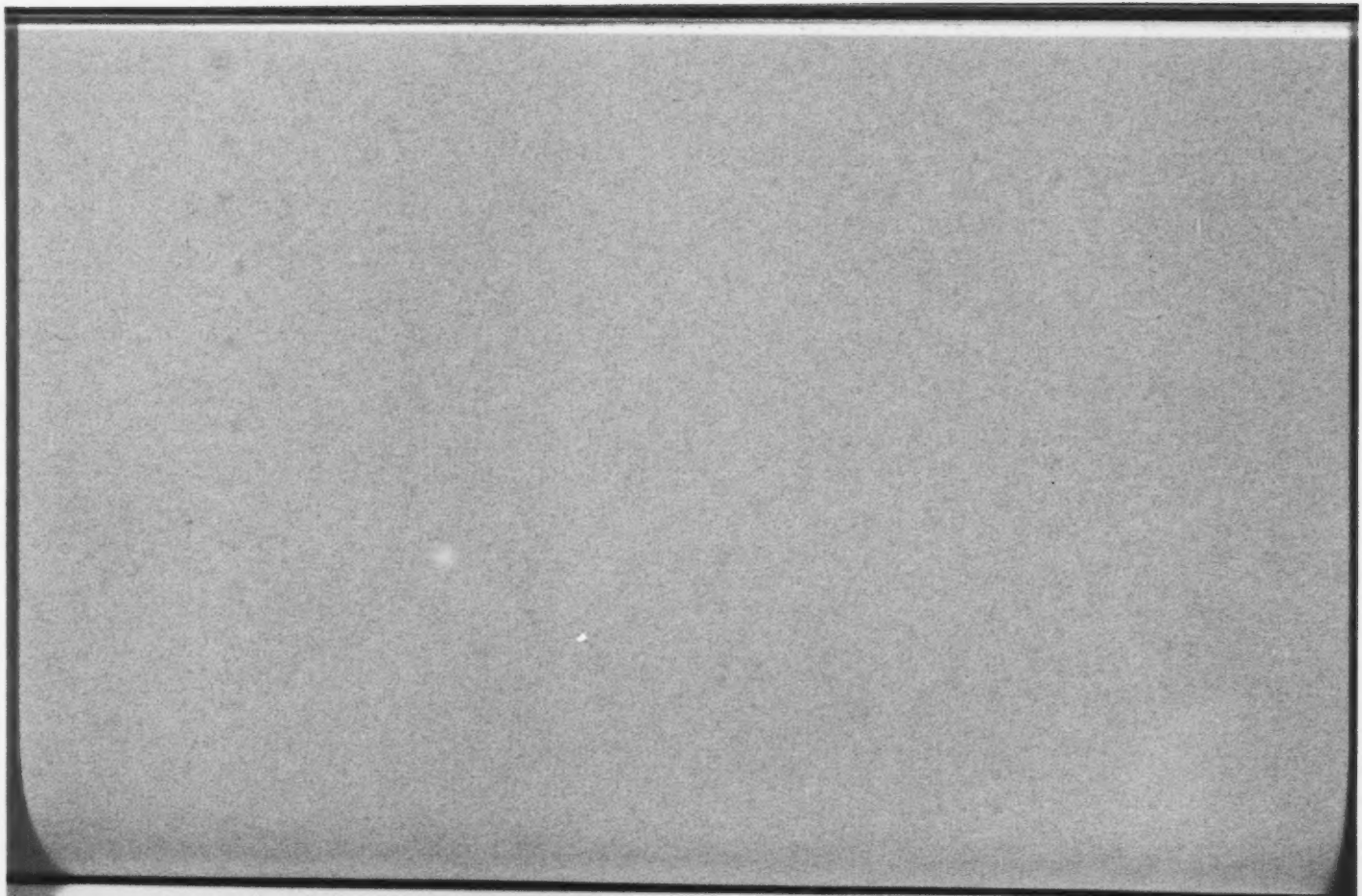

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In its opinion, the United States Court of Appeals for the District of Columbia said:

> "The Comptroller General in his settlement of claim has determined that it cost the Government $104,290.19 to obtain the remainder of the supplies. Thus the excess cost which plaintiff owes as damages is $21,-682.42." (R. 10.)

This statement is flatly contradicted by the Solicitor General by his quotation from a letter from the Assistant Comptroller General to the Attorney General wherein it is admitted that the cost to the Government was "in the net amount of $94,887.57" instead of $104,290.19. (Appendix to brief of Solicitor General, p. 11.)

In other words, it is admitted that the Comptroller General acting as the responsible accounting officer of the government of the United States has, as alleged by petitioner, set up a fictitious charge against this petitioner whereby he proposes to unjustly enrich the government of the United States at the expense of this petitioner for a sum of $9,119.75 never expended as excess cost or otherwise by the government of the United States. Thus, the admitted facts as set forth by the Solicitor General present an actual variance between fictitious and actual costs; an "actual controversy" to be determined by the use of the Declaratory Judgment Act of 1934. To suggest, as the Solicitor General does, that petitioner be relegated to suit at law under other procedure is to urge that congressional efforts to modernize judicial processes be forgotten, and, the decisions of this Court be ignored.

Petitioner approaches this Court in the confident belief that it will not approve unjust enrichment whether it be claimed on behalf of the government of the United States or others.

For this reason, alone with others urged, petitioner respectively submits that the writ of certiorari should be granted as prayed.

September, 1942.

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